

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DIEGO LARA ANDRADE,

No. 2:17-cv-00746-SU

Petitioner,

v.

BRAD CAIN,

ORDER

Respondent.

HERNANDEZ, District Judge:

Magistrate Judge Sullivan issued a Findings & Recommendation (#42) on September 17, 2018, in which she recommends the Court deny Petitioner's habeas corpus action and decline to issue a Certificate of Appealability. Petitioner has timely filed objections to the Findings & Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings & Recommendation, the district court must make a *de novo* determination of that portion of the

Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

I have carefully considered Petitioner's objections and conclude there is no basis to modify the Findings & Recommendation. I have also reviewed the pertinent portions of the record *de novo* and find no other errors in the Magistrate Judge's Findings & Recommendation.

After the Findings & Recommendation was filed, Petitioner filed a motion for relief from judgment. The motion was filed before a judgment was issued but it appears to request an extension of time to file a memoranda supporting the habeas petition. Given that the Findings & Recommendation had issued before Petitioner filed this motion, and that Petitioner had already received several extensions of time in which to file his supporting memoranda, the motion is denied.

CONCLUSION

The Court ADOPTS Magistrate Judge Sullivan's Findings & Recommendation [49], and therefore, the Petition for Writ of Habeas Corpus [2] is denied. The Court declines to issue a Certificate of Appealability because Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). The motion for relief from judgment [49] is denied.

IT IS SO ORDERED.

DATED this 17 day of Sept., 2019.



MARCO A. HERNANDEZ
United States District Judge